

§ 26.27

that there were reasonable grounds for the failure to present such evidence at the hearing, the Secretary or designee shall remand the matter to the hearing officer for reconsideration in light of the additional evidence.

(k) *Ex parte communications.* The prohibitions of ex parte communications in § 26.3 shall apply to contacts with the Secretary or the Secretary's designee.

(l) *Determination.* The Secretary or designee may affirm, modify, reverse, remand, reduce, compromise, or settle any determination made or action ordered in the initial determination or order. The Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(m) *Written determination.* Where a request for Secretarial review has been timely made, the Secretary, or designee, shall issue a written determination within 30 days after receipt of the request for review, and shall serve it upon the parties to the hearing and the hearing officer. The Secretary, or designee, may extend the time in which a written determination must be issued by an additional 60 days for good cause shown in a written justification issued to the parties. The written determination of the Secretary shall be final. If the Secretary, or designee, does not act upon the request for review of a determination within 90 days of service of the request, then the initial determination shall be the final agency action.

§ 26.27 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within 10 days of the ruling requesting certification of the ruling for review by the Secretary, or in cases arising under 2 CFR part 2424, with the Debarring Official. Certification may be granted if the hearing officer believes that:

(1) It involves an important issue of law or policy as to which there is substantial ground for difference of opinion; and

(2) An immediate appeal from the order may materially advance the ultimate termination of the litigation.

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(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within 10 days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, or Debarring Official shall review a certified ruling. The Secretary, designee, or Debarring Official has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, designee, or Debarring Official, the hearing shall proceed pending the determination of any interlocutory appeal, and the order or ruling of the hearing officer shall be effective pending review.

Subpart B—Hearings Pursuant to the Administrative Procedure Act

§ 26.28 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*)

§ 26.29 Definitions.

The following definitions apply to subpart B of this part:

Complaint means the notice from HUD alleging violations of a HUD statute and/or regulation, citing the legal authority upon which it is issued, stating the relief HUD seeks, and informing a respondent of his or her right to submit a response to a designated office and to request an opportunity for a hearing before an Administrative Law Judge.

Docket Clerk means the Docket Clerk of the Office of Administrative Law Judges, located at the following address—409 Third Street, SW., Second Floor, Washington, DC 20024; mailing address is 451 7th Street, SW., Room B-133, Washington, DC 20410.

Respondent, unless otherwise identified by other governing statute, rule, or regulation, is the party against whom the administrative action is taken.

Response means the written response to a complaint, admitting or denying

the allegations in the complaint and setting forth any affirmative defense and any mitigating factors or extenuating circumstances. The response shall be submitted to the division of the Office of General Counsel that initiates the complaint or to such other office as may be designated in the complaint. A response is deemed a request for a hearing.

§ 26.30 Service and filing.

(a) *Filing.* Unless otherwise provided by statute, rule, or regulation, all documents shall be filed with the Docket Clerk. Filing may be by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means; however, the ALJ may place reasonable limits on filing by facsimile transmission or electronic means. All documents shall clearly designate the docket number and title of the proceeding. Duplicate copies are not required unless ordered by the ALJ.

(b) *Service.* One copy of all documents filed with the Docket Clerk shall be served upon each party by the persons filing them and shall be accompanied by a certificate of service stating how and when such service has been made. Service may be made by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means; however, the ALJ may place reasonable limits on service by facsimile transmission or electronic means. Documents shall be served upon a party's address of residence or principal place of business, or, if the party is represented by counsel, upon counsel of record at the address of counsel. Service is complete when handed to the person or delivered to the person's office or residence and deposited in a conspicuous place. If service is by first-class mail, overnight delivery, facsimile transmission, or electronic means, service is complete upon deposit in the mail or upon electronic transmission.

§ 26.31 Time computations.

(a) *General.* In computing any period of time under subpart B of this part, the time period begins the day following the act, event, or default, and includes the last day of the period, unless the last day is a Saturday, Sunday,

or legal holiday observed by the Federal Government, in which case the time period includes the next business day. When the prescribed time period is 7 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an Administrative Law Judge, the date of issuance is the date the order or decision is served by the Docket Clerk.

(c) *Service by mail.* If a document is served by mail, 3 days shall be added to the time permitted for a response.

ADMINISTRATIVE LAW JUDGE

§ 26.32 Powers and duties of the Administrative Law Judge (ALJ).

The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made. The ALJ is authorized to:

(a) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(b) Continue or recess the hearing, in whole or in part, for a reasonable period of time;

(c) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(d) Administer oaths and affirmations;

(e) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(f) Rule on motions and other procedural matters;

(g) Regulate the scope and timing of discovery;

(h) Regulate the course of the hearing and the conduct of representatives and parties;

(i) Examine witnesses;

(j) Receive, rule on, exclude, or limit evidence;

(k) Upon motion of a party, take official notice of facts;

(l) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;